IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/09/2002

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THE HONOURABLE MR. JUSTICE P.K.MISRA

W.P.NO.5520 OF 1998

M.Kannabiran ..Petitioner

-Vs-

1. The Joint Registrar of Co-operative Societies
Thiruvannamalai Region
Thiruvannamalai

2.The President
H.H.17 Periya Keelambadi Primary
Agricultural Co-operative Bank
Periya Keelambadi Post
Nayudumangalam
Thiruvannamalai District ..... Respondents

Petition filed under Article 226 of the Constitution of India for the issue of writ of Certiorarified Mandamus as stated therein.

For petitioner :Mr.S.M.Subramanian

For respondents : Ms.N.G.Kalaiselvi, Spl.G.P.

:ORDER

Heard the learned counsel for the petitioner and the learned Special Government Pleader for respondent No.1. Even though the respondent No.2 has not appeared, the learned Special Government Pleader has also made submission on behalf of the respondent No.2.

2.The present writ petition is preferred against the order of termination passed by the respondent No.2 as confirmed in revision under Section 153 of the Co-operative Societies Act. The petitioner was placed under suspension since 29.6.96 and subsequently, charge memo was issued. In the departmental enquiry itself the petitioner has prayed for payment of subsistence allowance, but, such allowance had not been paid in spite of the direction of the Assistant Commissioner of Labour. Ultimately, in the

departmental proceeding, it was found that the charge relating to misappropriation had not been established. But, it was found that the petitioner has failed to account for the empty gunny bags worth about Rs.3,000/-. On the basis of a such conclusion, the petitioner was terminated from service. The revision filed by the petitioner has been negatived by the revisional authority on the ground that the petitioner should approach the Labour Court.

3.The counsel appearing for the petitioner has submitted that even though the petitioner had attended the enquiry on a few occasions, subsequently, he could not attend the enquiry as subsistence allowance had not been paid. Even otherwise, he has submitted that the main conclusion relating to misappropriation having been discarded by the disciplinary authority, the punishment of termination from service on the basis of the allegation that some empty gunny bags worth about Rs. 3,000/- had not been accounted for, was grossly disproportionate and uncalled for and cannot be sustained.

4.The learned counsel appearing for the State Government has supported the order of punishment.

5.Law is well settled that if on account of non-payment of subsistence allowance, the applicant is not able to attend the enquiry, the domestic enquiry becomes vitiated on the ground of violation of principles of natural justice.
The decision of the Supreme Court in GHANSHYAM DAS SHRIVASTAVA V. STATE OF MADHYA PRADESH ((1973) 1 SCC 656 is relevant on this aspect. A similar view has been subsequently taken by the Supreme Court in CAPT.M.PAUL ANTHONY V. BHARAT GOLD MINES LTD. & ANOTHER (1999 (2) S.C. 456. Para 33 of the said decision is extracted hereunder:
"33. Since in the instant case the appellant was not provided any Subsistence Allowance during the period of suspension and the adjournment prayed for by him on account of his illness, duly supported by medical certificates, was refused resulting in ex-parte proceedings against him, we are of the opinion that the appellant has been punished in total violation of the principles of natural justice and he was literally not afforded any opportunity of hearing. Moreover, as pleaded by the appellant before the High Court as also before us that on account of his penury occasioned by non-payment of Subsistence Allowance, he could not undertake a journey to attend the disciplinary proceedings, the findings recorded by the Inquiry Officer at such proceedings, which were held ex-parte, stand vitiated.

Following the aforesaid decisions, the order of termination which has been passed in violation of principles of natural justice as adequate opportunity has not been afforded to the petitioner, cannot be sustained and is hereby quashed.

6.The next question is as to whether the respondent should be allowed to revive the proceeding. the petitioner has been placed under suspension in 1996. The main allegation relating to misappropriation was not accepted by the disciplinary authority. The residue of the allegation relates to non-accounting for the few empty gunny bags. The petitioner has already

suffered enough harassment by pursuing his matter in various legal proceedings. Keeping in view all these aspects, even accepting the allegation that a few empty gunny bags have not been accounted for, it would not be in the interest of justice to revive the proceeding. On the other hand, interest of justice would be served by giving a direction for reinstatement to the petitioner without payment of any back wages.

7.This writ petition is accordingly allowed. The order of dismissal is quashed. The petitioner is deemed to be in service for all purposes. However, it is made clear that no back wages would be payable to the petitioner for the period from the date of dismissal till the date on which he rejoins service. It is, however, made clear that the subsistence allowance as per the direction of the Assistant Labour Commissioner if not paid in the meantime should be paid to the petitioner. The petitioner should be allowed to rejoin within a period of one month from today. The order relating to payment of arrears of subsistence should be complied within in a period of three months. There will be no order as to costs.

18-09-2002

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internet:yes
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To

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Thiruvannamalai Region
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